

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                           |   |                                      |
|---------------------------|---|--------------------------------------|
| <b>VINCENT TOLENTINO,</b> | : | <b>CIVIL ACTION NO. 3:19-CV-1363</b> |
|                           | : |                                      |
| <b>Plaintiff</b>          | : | <b>(Judge Conner)</b>                |
|                           | : |                                      |
| <b>v.</b>                 | : |                                      |
|                           | : |                                      |
| <b>DR. XUE, et al.,</b>   | : |                                      |
|                           | : |                                      |
| <b>Defendants</b>         | : |                                      |

**ORDER**

AND NOW, this 30th day of September, 2020, upon consideration of the complaint as supplemented, the motions to dismiss of the defendants, and plaintiff's opposition thereto, it is hereby ORDERED that:

1. The motion to dismiss of defendants Xue and Cousins (Doc. 91) is DENIED.
2. The motion to dismiss of defendants Flasher and Price (Doc. 72) is DENIED.
3. The partial motion to dismiss of defendant Baldauf (Doc. 74) is GRANTED.
4. Plaintiff's claims for Pennsylvania state-law professional negligence and intentional infliction of emotional distress are DISMISSED without prejudice.
5. Plaintiff is granted 21 days from the date of this order to file an amended complaint to cure the deficiencies identified in the court's memorandum opinion. Any amended pleading filed pursuant to this paragraph shall be filed to the same docket number as the instant action, shall be entitled "Amended Complaint," and shall be complete in all respects. It shall be a new pleading that stands by itself as an adequate complaint under the Federal Rules of Civil Procedure.

6. In the absence of a timely filed amended complaint, the above-captioned action shall proceed on the Eighth Amendment medical care claim against defendants Xue, Cousins, Flasher, Price, and Baldauf.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner  
United States District Judge  
Middle District of Pennsylvania